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Monday, 29 November 2004

Stark Calls for Treasury Department's Prompt and Public Clarification of Tax Repatriation Rules

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TAXPAYERS COULD PAY MILLIONS IN LEGAL BILLS FOR MAKERS OF VIOXX AND FEN-PHEN IF ADMINISTRATION GIVES COMPANIES A GREEN LIGHT TO ABUSE TAX HOLIDAY

Stark Calls for Treasury Department's Prompt and Public Clarification of Tax Repatriation Rules

WASHINGTON, DC – Today, in a letter to Acting Assistant Secretary of Treasury Greg Jenner, Rep. Pete Stark (D-CA) called on the Treasury Department to move quickly to clear up ambiguities in the American Jobs Creation Act that would allow the pharmaceutical giants Merck and Wyeth to use the law's tax repatriation provision to fund their ongoing legal troubles over drug liability.

"America's taxpayers should not be paying billions of dollars to bail out pharmaceutical companies that rushed products to market when they knew of their potential for harm. Yet, if this tax holiday provision is not clarified, taxpayers may do just that," said Rep. Stark. "I urge the Treasury Department to act now to preempt any attempt by the drug industry to push the cost of their corporate misdeeds onto the American taxpayer."

The following is the full text of the letter:

November 30, 2004

Greg Jenner

Acting Assistant Secretary for Tax Policy

Department of Treasury

1500 Pennsylvania Avenue, NW

Washington, DC 20220

Dear Assistant Secretary Jenner:

I would like to commend you for the fact that the Treasury Department was one of the few voices to oppose the proposal for a temporary holiday during which companies could repatriate their foreign earnings at a U.S. tax rate as low as 5.25 percent. Unfortunately, Congress was not persuaded by those arguments, and the tax holiday was enacted as part of the American Jobs Creation Act of 2004 (new §965 of the Internal Revenue Code).

Treasury now has the arduous task of implementing a legislative proposal that you opposed. The statute provides that eligible reinvestments include “the funding of worker hiring and training, infrastructure, research and development, capital investments, or the financial stabilization of the corporation for purposes of job retention or creation.” Fortunately, this language is somewhat ambiguous and gives your department sufficient leeway to define the uses of repatriated earnings. I believe it is important that you exercise your authority to do so in a way that does not expand the tax benefits beyond Congressional intent.

I am concerned that pharmaceutical manufacturers may seek to exploit the “financial stabilization” language to justify using repatriated funds to cover tort and product liability expenses. For the reasons expressed below I ask that Treasury promptly issue clarification that repatriated earnings cannot be used to fund tort and product liability obligations under the guise of financial stabilization.

Two recent examples shed light on the danger of the situation. Both Merck (Vioxx) and Wyeth (Fen-Phen) are facing enormous product liability losses as a result of continued marketing and sale of these dangerous drugs. If these pharmaceutical companies are permitted to use tax preferred repatriated earnings to fund their legal liabilities, it would be an extraordinary benefit.

Unless Treasury issues guidance to the contrary, Merck and Wyeth would only pay a 5.25 percent tax rate (rather than the normal 35% corporate tax rate) on their repatriated dividends. They would then receive an additional tax deduction, worth as much as 35 percent, if they used those dividends to finance their product liability lawsuits.

Let’s be clear. Even without the repatriation holiday, Merck and Wyeth would not end up paying taxes on repatriated foreign earnings used to fund legal expenses because of the offsetting deduction for liability

payments. But, if they are allowed to use the benefit of the repatriation holiday, not only will they avoid the standard corporate tax on foreign earnings, they could receive an additional benefit equal to as much as 30 percent of their product liabilities.

In the case of Merck, where some believe it's liability for the Vioxx recall could be as much as \$10 billion, this additional benefit could be \$3 billion.

I urge you to prohibit the extraordinary double benefit that would result if companies use repatriated dividends to fund deductible liabilities. The term "reinvested" in its ordinary meaning does not include the payment of ordinary and necessary business expenses such as product liabilities.

Therefore, I argue that the statute by its terms does not permit that double benefit.

It is vitally important for the Treasury Department to promptly issue public clarification as to what types of reinvestments will qualify for the repatriation holiday and the period during which those reinvestments must be made. The amounts involved potentially are so large that it is important that the clarification be done publicly so there is a transparency to the rules.

I look forward to your expedited response to this time sensitive issue.

Sincerely,

Pete Stark

Ranking Member

Committee on Ways and Means

Subcommittee on Health